

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

RICHARD JOHNSON	§	
v.	§	CIVIL ACTION NO. 9:05cv16
DIRECTOR, TDCJ-CID	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Richard Johnson, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of one of his convictions, for credit card abuse. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Johnson was convicted of credit card abuse on August 15, 2000, receiving a sentence of two years in prison (with 32 days of jail time credit). He is also currently serving a 30-year sentence for burglary and a 99-year sentence for escape. These other convictions are not at issue in the present case.

The Magistrate Judge ordered the Respondent to answer Johnson's petition. The Respondent asserted that Johnson is not in custody under the sentence for credit card abuse because this sentence has already been discharged. The state court records show that Johnson filed two state habeas petitions regarding this conviction, which were denied on February 12, 2003; a third state petition, filed on January 30, 2004, was denied because the challenged sentence had already expired. Records show that this sentence expired on July 15, 2002. Johnson did not file a response to the answer.

On November 16, 2005, the Magistrate Judge issued a Report recommending that the petition be dismissed because Johnson was not in custody under this sentence. Johnson received a copy of

this Report on November 28, 2005, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Magistrate Judge's Report is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus is DISMISSED with prejudice. It is further

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So **ORDERED** and **SIGNED** this 7 day of **February, 2006**.



Ron Clark, United States District Judge